

In the Matter of Jose Rivera,
Delivery Worker (C6840E), Passaic County
DOP Docket No. 2004-2146
(Merit System Board, decided May 19, 2004)

Jose Rivera appeals the decision of the appointing authority to remove his name from the eligible list for Delivery Worker (C6840E), Passaic County based on an inability to communicate effectively in English in order to perform the duties of the position.

The subject eligible list was promulgated on March 20, 2003 and expires March 19, 2006. In disposing of the March 24, 2003 certification of the subject eligible list, the appointing authority requested the removal of the appellant's name due to his inability to communicate effectively in English in order to perform the duties of the position. Specifically, the appointing authority asserted that during an interview, the appellant expressed below average communication skills, both verbal and written. Additionally, the appointing authority asserted that the appellant either did not have full command or lacked confidence speaking English. Further, it stated that it was difficult to understand the appellant without paying close attention. Finally, the appointing authority contended that communication was essential regardless of the position, especially in the daily service that it provides to older adults.

On appeal to the Merit System Board (Board), the appellant states that he felt his interview went well. He explains that he is Spanish and has an accent, but that he understood the interview. Additionally, the appellant asserts that he answered all of the interviewer's questions without a problem, and that he also asked questions. Further, the appellant argues that he was being discriminated against because he is Latino.

The appointing authority, despite being provided the opportunity, did not submit any information or arguments for the Board's review.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows the Board to remove an eligible's name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate's background and recognizing the nature of the position at issue, a person should not be eligible for appointment.

In the instant matter, the appointing authority asserts that the appellant was unable to communicate effectively in English in order to perform the duties of

the position. In this regard, a review of the definition portion of the job specification for Delivery Worker indicates that one in that title, "Under direction, picks up and delivers materials, parts, supplies, linen, equipment, and other items to various locations; does other related duties as required." The examples of work for this title generally describe the various types of deliveries that one in the subject title may be required to perform. Under the circumstances, it does not appear that communication skills beyond a basic level, either written or verbal, are an essential element of the job. In this regard, the appointing authority has not presented any substantive evidence or arguments that clearly demonstrate that the appellant is not sufficiently proficient in the English language to perform the duties of the job. Accordingly, the appellant has met his burden of proof in this matter and the appointing authority has not shown sufficient justification for removing his name from the Delivery Worker (C6840E), Passaic County eligible list.

ORDER

Therefore, it is ordered that this appeal be granted and the appellant's name be restored to the Delivery Worker (C6840E), Passaic County eligible list to be considered for future appointments only.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.